

SETTLEMENT AGREEMENT AND RELEASE

SMS Supercars

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SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street Sacramento, California 95814, and SMS Supercars (SMS), 2735 Wardlow Avenue, Corona, California 92882.

I. RECITALS

- (1) California Health and Safety Code section 43151(a) states, "No person who is a resident of, or operates an established place of business within, this state shall import, deliver, purchase, rent, lease, acquire, or receive a new motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine for use, registration, or resale in this state unless such motor vehicle engine or motor vehicle has been certified pursuant to this chapter. No person shall attempt or assist in any such action."
- (2) California Health and Safety Code section 43152 states, "No person who is engaged in this state in the business of selling to an ultimate purchaser, or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently import, deliver, purchase, receive, or otherwise acquire a new motor vehicle, a new motor vehicle engine, or vehicle with a new motor vehicle engine which is intended for use primarily in this state, for sale or resale to an ultimate purchaser who is a resident of or doing business in this state, or for registration, leasing, or rental in this state, which has not been certified pursuant to this chapter. No person shall attempt or assist in any such act."
- (3) California Health and Safety Code section 43153 states "No person who is engaged in this state in the business of selling to an ultimate purchaser, or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently sell or offer to sell, to an ultimate purchaser who is a resident of or doing business in this state, or lease or offer to lease, rent, or offer to rent, in this state any new motor vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine, which is intended primarily for use or for registration in this state, and which has not been certified pursuant to this chapter. No person shall attempt or assist in any such action."
- (4) California Health and Safety Code section 43154(a) states, "Any person who violates any provision of this article shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) per vehicle."

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- (5) Title 13, CCR section 2472(a) states, "No person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required off-road vehicle, engine, or equipment pollution control device or system which alters or modifies the original design or performance of any such pollution control device or system."
- (6) Title 13, CCR section 2222(c) states, "No person shall advertise, offer for sale, or install a part as a motor vehicle pollution control device or as an approved or certified device, when in fact such part is not a motor vehicle pollution control device or is or approved or certified by the board."
- (7) California Vehicle Code (VC) section 27156(c) provides, in pertinent part, that "No person shall install, sell, offer for sale, or advertise any device intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system."
- (8) Between August 30, 2010 and February 28, 2011, SMS Supercars modified and offered for sale seven new and modified MY2010 Dodge Challengers (under 7,500 odometer miles, VIN #'s 2B3CJ5DT1AH203781, 2B3CJ5DT9AH129820, 2B3CJ5DT9AH17977, 2B3CJ5DT6AH134747, 2B3CJ5DT8AH134748, 2B3CJ5DT3AH171317, 2B3CJ5DT1AH171318) for use or registration in California. The modifications to the new, MY2010 vehicles render them uncertified and illegal for sale or use in California. SMS Supercars's actions violate Sections 43151 through 43153 of the California Health and Safety Code (H&SC) and Section 27156 of the California Vehicle Code. The ARB documented these violations for seven vehicles in a Cease & Desist letter issued on February 28, 2011.
- (9) SMS Supercars stipulates to the facts and the violations of Health and Safety Code sections 43151-43153 and Vehicle Code section 27156 described above.

II. TERMS AND CONDITIONS

In consideration of ARB not filing a legal action for the violations referred to above, ARB and SMS Supercars agree as follows:

- (1) ~~SMS Supercars shall pay the sum of Twenty-Eight Thousand dollars (\$28,000), to the California Air Pollution Control Fund. The full payment is due immediately and shall be payable to the California Air Pollution~~ Control Fund and addressed to:

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Martina Diaz
Air Resources Board
Enforcement Division
Mobile Source Enforcement Section
9528 Telstar Avenue
El Monte, California 91731

- (2) SMS Supercars represents that it understands the legal requirements applicable to selling modified vehicles in California and agrees that it will not assist in the marketing or sale of modified vehicles unless the vehicles have been transferred to an ultimate purchaser. SMS Supercars agrees that it will not acquire, modify, offer for sale or sell new, uncertified vehicles for use or registration in California and SMS Supercars promises that any vehicles in its possession not certified to California emission standards will be removed from California.
- (3) Now therefore, in consideration of the payment by SMS Supercars in the amount of Twenty Eight Thousand dollars (\$28,000) to the California Air Pollution Control Fund, ARB hereby releases SMS Supercars and their principals, officers, agents, and successors from any and all claims ARB may have based upon the events described in recital paragraphs (8) and (9) hereinabove, including claims under Health and Safety Code sections 45151, 43152, 43153, 43154 and Vehicle Code section 27156. The undersigned represent that they have the authority to enter into this Agreement.

(1) **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024.

The per vehicle penalty in this case is a maximum of \$5000 per unit per strict liability violation. The penalty obtained in this case is approximately \$4,000 per vehicle for seven vehicles for a total of \$28,000. The penalty

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was slightly reduced because the violator cooperated fully with the investigation.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provision being applied in this case is section 43154 because SMS Supercars modified and offered for sale aftermarket parts supercharger kits non-certified in California in violation of Health and Safety Code section 43151-43153 and Vehicle Code section 27156 described above.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The provisions cited above do not prohibit emissions above a specified level. However, since the vehicles were not certified for sale in California, emissions attributable to them are illegal. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available.

- (2) SMS Supercars acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
- (3) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
- (4) The penalty was also based on confidential business information provided by SMS Supercars that is not retained by ARB in the ordinary course of business. The penalty was also based on confidential settlement communications between ARB and SMS Supercars that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and SMS Supercars and

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reflects ARB's assessment of the relative strength of its case against SMS Supercars, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that SMS Supercars may have secured from its actions.

- (5) SMS Supercars represents that it understands the legal requirements applicable to using uncertified engines in California.

California Air Resources Board

SMS Supercars

By: Ellen M. Peter
Name: Ellen M. Peter
Title: Chief Counsel
Date: 9/14/2011

By: Steve Saleen
Name: Steve Saleen
Title: President
Date: 8-9-11